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No. 73-571

In the Supreme Court of the United States

OCTOBER TERM, 1973

JERRY EUGENE GRAVITT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that the inventorying of the contents of his car, after it was taken into custody for safekeeping when he was arrested, violated his rights under the Fourth Amendment, and that there was insufficient independent corroboration of his confession.

After a jury trial in the United States District Court for the Northern District of Florida, petitioner was convicted of transporting firearms while a fugitive from justice (count 1), and transporting firearms (count 3) and ammunition (count 4) after having been convicted of a felony,[1] all in violation of 18 U.S.C. 922(g). He was sentenced to consecutive terms of imprisonment

[1] The trial judge dismissed count 2, charging possession of unregistered weapons (Pet. App. A3, n. 1).

for five years on counts 1 and 3, and to a concurrent term of five years' imprisonment on count 4. The court of appeals affirmed (Pet. App.).

The evidence adduced at trial and at hearings on motions to suppress[2] showed that at 1:30 a.m. on May 15, 1971, Sergeant Charles Buckley of the Panama City Beach, Florida, police received information that three men named Gravitt were in a local nightclub and that they were fugitives from Atlanta, Georgia. Sergeant Buckley confirmed by telephone conversation with Atlanta police that warrants were outstanding for the arrest of petitioner and his brother, Ronnie; that they had been charged with armed bank robbery; and that they were considered to be armed and dangerous (Tr. 65-67). Buckley and other local police officers watched the nightclub and arrested petitioner, his brothers Ronnie and William Eddie, and William Eddie's wife as they left shortly before 5 a.m. (Tr. 12, 47).

At the parking lot of the nightclub, the arresting officers conducted a brief search of petitioner's clothing. This search yielded credit cards and a diver's license in the name of Gerald A. Lewis, and six .38 calibre shells (Tr. 12-14, 47). Upon arrival at the police station, petitioner and Ronnie Gravitt were subjected to a more thorough search. A .38 calibre Colt revolver was found in one of petitioner's boots (Tr. 48).[3] Among the items seized from Ronnie Gravitt were automobile

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[2] We are lodging with the Clerk of this Court the one-volume transcript of the trial and hearings conducted during the trial ("Tr.").

[3] The revolver found in petitioner's boot was included among the firearms listed in count 1, but was inadvertently omitted in count 3. All of the items listed in count 3 were in petitioner's car.

keys and a key to a motel room. Sergeant Buckley and Officer Norton went to the motel and found that a person identifying himself as Gerald A. Lewis had registered May 14 and paid for a room for three days. Petitioner's 1965 Buick with Georgia license plates was on the motel lot (Tr. 14). Sergeant Buckley directed Officer Norton to remove the vehicle to the police station, so that it could be inventoried and secured in accordance with customary police procedures for controlling property belonging to persons who have been arrested and are unlikely to be released immediately (Tr. 14-15).

While driving the Buick to the police station on that rainy morning, Officer Norton was required at one point to make a sudden stop to avoid striking a vehicle which had lost control on the wet road. He was struck on the foot by the butt of an M-1 rifle, which had been concealed under the seat until freed by the momentum of the sudden stop (Tr. 58-59). On arrival at the police station, Norton reported the presence of the rifle to Sergeant Buckley, who then examined the interior of the vehicle. He inventoried, but did not remove, other firearms and ammunition found in the vehicle, including the rifle discovered by Officer Norton, a bomb-like destructive device, a six-volt battery that could activate that device, several rounds of ammunition, a loaded shotgun, and a .45 calibre automatic rifle loaded with a magazine containing thirty shells (Tr. 16-18, 51-52).

Sergeant Buckley reported his discovery to the chief of police, who notified federal Alcohol, Tobacco and Firearms agents. After being advised of his rights and indicating that he was aware of his rights and did not want a lawyer present, petitioner admitted to the

agents that he and his brother, Ronnie,[4] had left Atlanta on May 13 and proceeded to a motel in Panama City Beach, where petitioner registered under a fictitious name. Petitioner admitted making the destructive device and owning all of the weapons and ammunition found in the vehicle. He stated that he had purchased those items in various cities in Georgia. Petitioner also acknowledged his awareness of the outstanding warrant for his arrest on the charge of armed robbery and stated that he was on parole when arrested by Sergeant Buckley (Tr. 102-104).

1. The court of appeals properly ruled that no violation of petitioner's Fourth Amendment rights occurred when the city policemen took custody of his automobile and examined its interior, as part of normal police procedure when assuming responsibility for the possessions of those confined in jail. The policemen could readily conclude that, following their arrest as fugitives, petitioner and his brother would not be released within the near future. Upon discovering the existence of a vehicle belonging to the fugitives, located on the premises of a temporary residence such as a motel,[5] the officers had a duty to protect the interests of the owner

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[4] Ronnie Gravitt was tried jointly with petitioner, convicted, and sentenced to probation for five years. No charges arising from this incident were lodged against the other two persons arrested with petitioner.

[5] Petitioner continues to stress the fact that his motel rent had been prepaid for two days after the vehicle was removed from the motel parking lot (Pet. 9). As the court of appeals noted (Pet. App. A8, n. 5), this fact would have prevented the motel management from having the car towed away until after May 17, but it did not affect the reasonableness of the officers' removal on May 15, since they could justifiably assume that petitioner's detention would last much longer than two days.

of the vehicle by removing it to a location beyond public access. See *Chambers* v. *Maroney,* 399 U.S. 42, 52, n. 10; *Cady* v. *Dombrowski,* decided June 21, 1973 (No. 72-586); *Harris* v. *United States,* 390 U.S. 234, 236.

In these circumstances, the accidental discovery of a rifle by Officer Norton as he drove petitioner's car from the motel to the police station cannot fairly be deemed an unlawful search. See *Coolidge* v. *New Hampshire,* 403 U.S. 443, 464-471; *Harris* v. *United States, supra.* Since proof of petitioner's possession of that rifle alone supports the convictions on the two counts upon which he received consecutive sentences, this Court need not, under the concurrent sentence doctrine, examine the propriety of the conduct which led to the discovery of other weapons. See *Barnes* v. *United States,* 412 U.S. 837, 848, n. 16; *Benton* v. *Maryland,* 395 U.S. 784.[6]

Contrary to petitioner's contention (Pet. 8-9), neither *Coolidge* v. *New Hampshire, supra,* nor *Cady* v. *Dombrowski, supra,* support his position that the removal of the Buick from the motel parking lot and the examination of the interior of the vehicle violated his Fourth

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[6] In any event, the ensuing inspection of the car's interior at the police station, for the purpose of inventorying its contents, was "responsible, indeed laudable, police conduct to protect the property of the owner of a lawfully impounded car." *United States* v. *Mitchell,* 458 F. 2d 960, 961 (C.A. 9); *United States* v. *Rosenberg,* 458 F. 2d 1183, 1185 (C.A. 5), certiorari denied, 409 U.S. 868; *United States* v. *Pennington,* 441 F. 2d 249 (C.A. 5), certiorari denied, 404 U.S. 854; *United States* v. *Lipscomb,* 435 F. 2d 795 (C.A. 5), certiorari denied, 401 U.S. 980; *United States* v. *Blackburn,* 389 F. 2d 93 (C.A. 6). Therefore, the discovery of the remaining weapons, ammunition, and the destructive device forming the subject matter of the counts upon which petitioner was convicted was not the result of an unreasonable search and seizure.

Amendment rights. *Coolidge* involved the warrantless seizure of a vehicle parked adjacent to the permanent dwelling place of the owner. The purpose of the seizure was to search for contraband.[7] There would have been no justification for impounding the vehicle in *Coolidge* for safekeeping. See *United States* v. *Squires,* 456 F. 2d 967 (C.A. 2).

In *Cady,* the intoxicated defendant's disabled vehicle was lawfully towed by police order from a bridge abutment to an open lot, because it was a traffic hazard. This Court sustained the lawfulness of the conduct of a police officer who examined the inside of the car, including the trunk, at the lot in search of a service revolver, which was reasonably thought to be present therein. The Court compared the defendant's car to an abandoned vehicle and indicated that the action of the officers in exercising control over it was "sound police procedure." (Slip op., p. 13). *Cady* thus recognizes the responsibility of local police for the cars of those who are in custody and supports the validity of the action taken in this case.

2. Petitioner's claim that his confession was not sufficiently corroborated by other evidence was fully discussed and properly rejected by the court of appeals (Pet. App. A11-A12). As that court pointed out, the requirement of corroboration does not mean that the government must introduce independent evidence on every element of the crime; on the contrary, a confession is admissible if there is extrinsic evidence which corro-

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[7] We note that petitioner does not challenge the conclusion of the court below that there were here no grounds for concluding that the removal of the vehicle and the subsequent inspection were pretexts for searches for contraband (Pet. App. A9).

borates the confession as a whole.[8] There was ample corroboration of petitioner's confession. As stated by the court below (Pet. App. A12): "Indeed, virtually every item of extrinsic evidence tended in one way or another to corroborate Gravitt's substantially complete account of the crime."

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1973.

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[8] Although *Smith* v. *United States*, 348 U.S. 147, 156; *Opper* v. *United States*, 348 U.S. 84, 93; and *United States* v. *Calderon*, 348 U.S. 160, 168, are not entirely unambiguous on this issue, they have been consistently interpreted by the courts of appeals as supporting the conclusion reached below in this case. See *United States* v. *Abigando*, 439 F. 2d 827 (C.A. 5); *United States* v. *Wilson*, 436 F. 2d 122, 124 (C.A. 3), certiorari denied, 402 U.S. 912; *United States* v. *Bukowski*, 435 F. 2d 1094, 1105-1107 (C.A. 7), certiorari denied, 401 U.S. 911; *Mapys* v. *United States*, 409 F. 2d 964, 967 (C.A. 10), certiorari denied, 399 U.S. 932.

In any event, petitioner's contention that there was no extrinsic evidence indicating that the weapons were transported in interstate commerce is incorrect (Pet. 10). The evidence indicated that petitioner had arrived in Florida only hours before he was apprehended at the nightclub. This circumstance corroborated petitioner's confession that the weapons had not been purchased in the State.